IN THE COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE.

Criminal Revision Application No.88 of 2006.

Shehnaz Mustafa Fida Husain Waliji ..Applicants.
& Ors.

V/s.

The State of Maharashtra. ..Respondent.

Mr. Mundurgani, Senior Advocate, with Saifee H. Raj and Bhandari Advocates for Applicants.
Mr. P.S.Hingorani, A.P.P.for Respondent.

CORAM:- ***R.S.MOHITE.J.***

DATED:- **13/03/2006**

P.C.:-

. Heard both the sides.

. Rule. By consent of parties, rule returnable forthwith.

. The Advocate for the applicants states that he would like to restrict himself in this case to the question of sentence.

. The applicants have been convicted by the Trial Court for the offence under Sections 417,465 and 468 of the Indian Penal Code. For the offence punishable under Sections 417 and 465 only fine of Rs.5,000/-each has been imposed in default of payment of fine sentence of one month S.I., is ordered. In respect of the conviction under Section 468 of the I.P.C.,however, court has imposed R.I., for two years and fine of Rs.5,000/- each, in default

of payment of fine S.I.,for a period of one month.

. The facts of the case are that the complainant, P.W.1 Sureshkumar Bawaraj was working at Sahar Airport since 1977 as Asstt. Immigration Officer. His job was to verify the passports and visas of the passengers. On 7th April, 2001, the two accused persons approached him for proceeding to Mauritius. Accused no.1 was having a French passport and accused no.2 was having Kenian passport. It is admitted position that passports of both the accused were genuine and the visas stamped on the said two passports were also genuine. On verification of the passports, complainant,however, found that arrival and departure entry of an earlier date on each of the passports did not show up on a computer check and there was no computerized record of arrival and departure of these passengers in India. He, therefore, lodged complaint with Sahar Police Station.

. Since the conviction of the accused/applicants by Lower Courts is not disputed, it is not necessary for me to go into the merits of the case. As regards the sentence, it was submitted on behalf of the applicants that there was no evidence to show that any injury has been caused to any person by use of the documents which were alleged to be forged. It was the prosecution case that the applicants had never earlier entered the country. Admittedly, both of them were not Indian Citizens. It was submitted that due to this incident, since the year 2001, i.e. almost five years, applicants who are residents of Reunion Island,

have been confined to India since their passports were seized. During this period of five years,a child is born to applicant no.1 in India. It is contended that both the applicants have suffered immensely as they had to stay in this country, away from their family members.

. It is admitted position that fine of Rs.15,000/- each has been paid. I have perused the receipts. This position is also admitted by the prosecutor. It is submitted that applicant no.1 has undergone three days imprisonment and applicant no.2 has also undergone four days imprisonment.

. In the special facts of the case, when it is admitted position that no injury was caused to any person and no evidence was produced to prove that alleged forged entries were mis-used for any purpose and specially in view of the fact that it was the prosecution case that these applicants never entered the country earlier, which eliminated the possibility of any mischief or crime being committed on the Indian soil, I am inclined to modify sentence by substantially increasing the quantum of fine. In such circumstances, it is directed that the conviction and sentence of the applicants under Sections 417 and 465 of the I.P.C.,is maintained and upheld.

. The conviction under Section 468 of the I.P.C.,is also confirmed but the sentence is modified as follows;

. The sentence of imprisonment of two years imposed by the lower courts is set aside and the applicants are convicted to suffer S.I. for the period already undergone.

In addition, it is directed that for the conviction under Section 468 of the I.P.C., applicants will also be liable to pay a fine of Rs.1,25,000/-each. This fine amount will be deposited by the applicants in the trial Court within a period of two weeks from today. In case, there is default in payment of fine, the applicants will be liable to undergo further S.I. of six months. The fine of Rs.5,000/-each, which has been deposited by the applicants in lieu of the conviction under Section 468 of the I.P.C., would be liable to be adjusted against the aforesaid fine of Rs.1,25,000/-each.

. Criminal Revision Application is disposed off and rule is made absolute in the aforesaid terms.

. It is made clear that upon the payment of fine, the applicants would be entitled to the return of their Passports.

. Certified copy be expedited.

R.S.MOHITE.J.